

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM TORRES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35838

FILED

JUL 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus.

On September 14, 1995, the district court convicted appellant, after a jury trial, of one count of trafficking in a controlled substance. The district court adjudicated appellant an habitual criminal and sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction and sentence. This court further modified the judgment of conviction to reflect that appellant had been convicted of trafficking in a controlled substance and directed the district court to correct its records.¹ The remittitur issued on March 3, 1998. The district court entered a corrected judgment of conviction on March 17, 1998.

On March 1, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the

¹Torres v. State, Docket No. 27769 (Order Dismissing Appeal and Modifying Judgment, February 10, 1998).

district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On March 8, 2000, the district court dismissed appellant's petition on the ground that it was procedurally time barred. This appeal followed.

Appellant filed his petition approximately two years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³ Generally, a lower court's determination regarding the existence of good cause will not be disturbed absent a clear case of abuse of discretion.⁴

In an attempt to demonstrate cause for the delay, appellant argued that he never received notice from this court or his appellate attorney that the remittitur had issued from his direct appeal. Although he appeared to acknowledge that he knew that his appeal had been dismissed on February 10, 1998, appellant argued that he should not have to guess about the date the remittitur issued. Based upon our review of the record on appeal, we conclude that the district court did not

²See NRS 34.726(1).

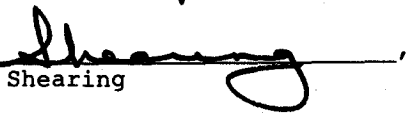
³See *id.*

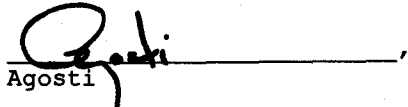
⁴See *Colley v. State*, 105 Nev. 235, 773 P.2d 1229 (1989).


abuse its discretion in determining appellant failed to demonstrate adequate cause to excuse his delay.⁵

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing J.


Agosti J.


Rose J.

cc: Hon. Steven P. Elliott, District Judge
Attorney General
Washoe County District Attorney
Adam Torres
Washoe County Clerk

⁵See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).